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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re C.S., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

A134492

(Contra Costa County
Super. Ct. No. J11-01457)

C.S. appeals from a dispositional order requiring that he complete the Youthful Offender Treatment Program after he admitted allegations that he committed an assault by means of force likely to produce great bodily injury. (Former Pen. Code, § 245, subd. (a)(1).) He argues that the case must be remanded for a determination of whether the offense is a felony or a misdemeanor. We agree and remand.

I. BACKGROUND

According to the probation report, appellant and four other individuals assaulted a man outside a bar in Vallejo on September 18, 2011. They punched the man in the face, and kicked him after he fell to the ground. The man's girlfriend and another woman tried to intervene, but appellant punched the girlfriend and kicked the woman, knocking them both to the ground. Appellant and the other assailants attempted to drive away, but they crashed into another vehicle in the parking lot and were arrested.

Appellant was charged in a wardship petition filed in Solano County with three felony counts of violating Penal Code section 245, subdivision (a)(1). At a readiness conference on October 12, 2011, appellant admitted count one, and counts two and three were dismissed. The court confirmed with appellant that he was admitting a felony that could carry a four-year maximum term of confinement, in order to avoid the possibility that he would be found to have committed three felonies. The court's form for juvenile minute orders contained boxes that could be checked to indicate whether counts in the petition were deemed to be felonies or misdemeanors. The court checked the box for "Felony" and specified count one. The matter was transferred for disposition to Contra Costa County, appellant's county of residence.

The probation report noted that appellant admitted committing a felony, and recommended that he be committed to the Division of Juvenile Justice. At disposition, the court stated: "This is a serious offense and clearly while it appears that the level of injuries sustained by the respective victims were not extremely serious, this conduct could have resulted in much more significant injury to any number of the victims. [¶] I do agree that this is obviously a very serious case. . . . [¶] I do think that [C.S.]'s behavior here was significantly violent in nature" During discussion of the restitution fine, the probation officer asked whether "just one felony . . . ha[d] been sustained," and the court replied, "He admitted one count, I believe."

II. DISCUSSION

Violation of Penal Code section 245, subdivision (a)(1) is punishable as either a felony or a misdemeanor. Welfare and Institutions Code section 702 provides: "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony." This obligation is mandatory and "strict compliance" (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 (*Manzy W.*) is enforced to "ensur[e] that the juvenile court is aware of, and actually exercises, its discretion" in the matter (*id.* at p. 1207). It is not enough for the ward to admit an offense charged as a felony, or for the court to specify a maximum felony-length term. (*Ibid.*) A specific, express finding on

the level of the offense is required. (*In re Jorge Q.* (1997) 54 Cal.App.4th 223, 238 (*Jorge Q.*).)

The People argue that the requisite finding was made here when the court checked the box for a felony in the minute order from the October 12 readiness conference and jurisdictional hearing. However, the weight of authority requires an “express oral on-the-record” finding. (*Jorge Q.*, *supra*, 54 Cal.App.4th at p. 238; see also *In re Ramon M.* (2009) 178 Cal.App.4th 665, 675 [“case law holds that minute orders are insufficient when the court fails to state on the record whether the offense should be treated as a felony or misdemeanor”]; *In re Eduardo D.* (2000) 81 Cal.App.4th 545, 549 [“the juvenile court did not orally indicate on the record whether the crime was a felony or misdemeanor [or] use any language that demonstrated an awareness of its discretion to make such a determination”]; *In re Dennis C.* (1980) 104 Cal.App.3d 16, 23 [minute order reflected a felony finding, but court did not state the finding at any hearing].)

The People speculate that, “[g]iven the minute order for the jurisdictional hearing, the dispositional court could properly assume the jurisdictional court had already made a misdemeanor-felony designation.” Even so, the dispositional court had discretion to reduce the violation to a misdemeanor even if the violation was found to be a felony at the jurisdictional hearing. “[T]he jurisdictional order is an intermediate, nonappealable order. [Citation.] . . . Thus, at the disposition hearing the court could . . . change Minor’s offense from a felony to a misdemeanor.” (*In re P.A.* (2012) 211 Cal.App.4th 23, 32.) “The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit.” (*Manzy Z.*, *supra*, 14 Cal.4th at p. 1209.) Nothing in this record establishes the court’s awareness of its discretion at the disposition.

III. DISPOSITION

This case is remanded to the juvenile court to allow that court to exercise its discretion to determine whether the assault was a felony or a misdemeanor and, if necessary, to recalculate appellant's maximum term of confinement. In all other respects, the dispositional order is affirmed.

Siggins, J.

We concur:

McGuiness, P.J.

Jenkins, J.